

#### **401 KAR 46:120. Coal combustion residuals (CCR) program.**

RELATES TO: KRS 224.1, 224.10, 224.50, 224.70, 224.99, Chapter 322, Chapter 322A, 16 U.S.C. 1531, 33 U.S.C. 1251, 42 U.S.C. 82, 40 C.F.R. 257.50-257.106

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes the requirements for a CCR permit-by-rule and registered permit-by-rule.

Section 1. CCR Permits. Any person engaged in the operation of a CCR unit shall comply with this administrative regulation.

(1)(a) An owner or operator of a CCR unit shall complete and submit the following to obtain a registered permit-by-rule:

1. Registered Permit-by-Rule for CCR Facility, DWM 4600; and
2. In accordance with Section 7 of this administrative regulation, established financial assurance and proof of publication of a public notice.

(b) Within thirty (30) days of the receipt, as evidenced by the date stamped by the Division of Waste Management, the cabinet shall review the registration information submitted in accordance with paragraph (a) of this subsection.

(c) After review of the registration information submitted in accordance with paragraph (a) of this subsection, the cabinet shall notify the applicant in writing:

1. The applicant completed and submitted all registration information and is deemed to have a registered permit-by-rule; or
2. The registration information is deficient, and require the owner or operator to submit the required information to the cabinet.

(d)1. The owner or operator of a registered permit-by-rule shall submit revised registration information pursuant to paragraph (a) of this subsection if any information changes.

2. Within thirty (30) days of receipt, the cabinet shall review the revised registration information in accordance with paragraphs (b) and (c) of this subsection.

(2) A beneficial use of CCR user shall be deemed to have a permit-by-rule without having made application with the cabinet, if:

- (a) The user is not in violation of 401 KAR Chapter 46 or 401 KAR 30:031;
- (b) The beneficial use of CCR does not present a threat or potential threat to human health or the environment;
- (c) The beneficial use of CCR does not result in a nuisance condition created by the fugitive emissions of CCR;
- (d) The user characterized the nonhazardous nature of the CCR in accordance with 401 KAR 31:030; and
- (e) The user submits an annual report to the cabinet pursuant to Section 5 of this administrative regulation.

Section 2. Notice of Concurrence. (1)(a) A permittee who has a permit-by-rule or a registered permit-by-rule as established in Section 1 of this administrative regulation may request a Notice of Concurrence from the cabinet.

(b) A person, who does not have a registered permit-by-rule as established in Section 1(1) of this administrative regulation, and intends to construct a CCR unit, may request a Notice of Concurrence from the cabinet prior to beginning construction.

(c) A person who intends to beneficially use CCR may request a Notice of Concurrence from the cabinet prior to beginning beneficial use.

(2) A person requesting to obtain a Notice of Concurrence shall complete and submit the following information, if applicable:

(a) CCR Notice of Concurrence Request, DWM 4610;

(b) For a seismic hazard analysis of a new CCR landfill or lateral expansion of an existing CCR landfill, a site-specific, scenario-based, deterministic, seismic hazard assessment;

(c) For a stability analysis of a new CCR landfill or lateral expansion of an existing CCR landfill, the landfill design demonstrating:

1. For subgrade, the factor of safety shall be a minimum of two and zero-tenths (2.0);

2. For the liner components, the factor of safety shall be a minimum of one and one-fourth (1.25);

3. For the final cover system, the factor of safety shall be a minimum of one and one-half (1.5);

4. For the synthetic liner material and structural synthetic materials, a maximum elongation of ten (10) percent; and

5. A minimum seismic factor of safety of one and zero-tenths (1.0);

(d) Additional information necessary to enable the cabinet to make a determination on the issuance of the Notice of Concurrence;

(e) 1. If for the unencapsulated beneficial use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, a check or money order made payable to the Kentucky State Treasurer in the amount of \$2,500; or

2. If for a person, who has not obtained a registered permit-by-rule as established in Section 1(1) of this administrative regulation, and intends to construct a CCR unit, a check or money order made payable to the Kentucky State Treasurer in the amount of \$5,000; and

(f) A narrative with supporting documentation, a certification statement, and seal, from a professional engineer or professional geologist, licensed in accordance with KRS Chapter 322 or KRS Chapter 322A, that the information prepared by the professional engineer or professional geologist, and submitted with the notice of concurrence request, meets the applicable portions of 401 KAR 46:110 and paragraphs (b) and (c) of this subsection.

(3) The cabinet shall review the submittal request for a Notice of Concurrence within 365 days of receipt and issue in writing to the applicant a:

(a) Notice of Concurrence stating the cabinet concurs that the information submitted in accordance with this section is determined to meet applicable criteria in 401 KAR Chapter 46;

(b) Deficiency letter from the cabinet that the submittal is incomplete or that additional information is necessary to enable the cabinet to issue the Notice of Concurrence; or

(c) Notice that the cabinet does not concur that the information submitted in accordance with this section meets the applicable criteria in 401 KAR Chapter 46.

(4)(a) Failure by the applicant to provide the requested information and documentation within ninety (90) days of issuance of a deficiency letter established in subsection (3)(b) of this section shall cause the CCR Notice of Concurrence Request, DWM 4610, to expire.

(b) More than two (2) deficiency letters shall not be issued in accordance with subsection (3)(b) of this section, after which the CCR Notice of Concurrence Request, DWM 4610, shall expire.

(c) Expiration of the CCR Notice of Concurrence Request, DWM 4610, shall not prevent the applicant from reapplying if the requested documentation becomes available.

(5)(a) The cabinet may rescind or modify in writing the Notice of Concurrence if the applicant or permittee is not in compliance with 401 KAR Chapter 46.

(b) The cabinet shall rescind the Notice of Concurrence in writing if the applicant submitted

a false certification.

Section 3. Transition of a Permit Issued in Accordance with 401 KAR Chapter 45. (1) A permittee who is subject to 401 KAR Chapter 46 shall notify the cabinet in writing of the permittee's intent to meet the requirements of 401 KAR Chapter 46 by no later than May 1, 2017, if the permittee possesses a:

- (a) Special waste permit-by-rule in accordance with 401 KAR 45:060;
- (b) Special waste registered permit-by-rule in accordance with 401 KAR 45:070; or
- (c) Formal permit for special waste in accordance with 401 KAR 45:030.

(2) Upon issuance by the cabinet of a registered permit-by-rule, a permit issued pursuant to 401 KAR Chapter 45 for management, disposal, or beneficial reuse of CCR shall terminate if the permittee is subject to 401 KAR Chapter 46.

Section 4. Annual Fees. (1)(a) The owner or operator of a CCR unit shall pay a \$15,000 annual fee for each facility in operation or post-closure.

(b) An owner or operator of a CCR unit shall notify the cabinet in writing upon completion of post-closure activities as established in 401 KAR 46:110, Section 6, and shall no longer be subject to annual fees established in this section.

(2) Payment shall be submitted to the Solid Waste Branch of the Division of Waste Management no later than July 31 of each year.

(3) The owner or operator shall complete and submit with the payment the CCR Annual Fee Form, DWM 4620.

(4) A check or money order shall be made payable to the Kentucky State Treasurer.

(5) The annual fee shall be due July 31, 2017, and every year after.

(6)(a) The owner or operator of a CCR unit may request an extension to the deadline. The extension shall not exceed thirty (30) days.

(b) The extension request shall be in writing and shall be received by the Solid Waste Branch of the Division of Waste Management prior to the deadline.

Section 5. Beneficial Use of CCR Reporting Requirements. The user shall submit to the cabinet an annual report of the beneficial use activity undertaken in the previous calendar year by March 31 that identifies the:

- (1) Name and address of the CCR generator;
- (2) Tonnage of CCR beneficially used;
- (3) Name and address of each user of CCR; and
- (4) Specific use of the CCR.

Section 6. Noncompliances. (1) The cabinet shall take any appropriate enforcement action, including corrective action, pursuant to 401 KAR Chapter 40, KRS 224.10-410, or 224.10-420, if the permittee is not operating in compliance with 401 KAR Chapter 46.

(2) The cabinet may revoke, modify, or suspend a CCR permit-by-rule or registered permit-by-rule pursuant to 401 KAR 40:040 upon a final determination of noncompliance with 401 KAR Chapter 46.

Section 7. Financial Assurance and Public Notice Requirements. (1) Owners and operators shall maintain financial assurance sufficient to complete closure and post-closure requirements established in 401 KAR 46:110:

- (a) For new CCR units; and
- (b) Existing CCR units that were required to establish financial assurance in accordance

with 401 KAR 45:080.

(2) Financial assurance requirements shall be in accordance with 401 KAR 45:080, Sections 4, 7, 9, and 10.

(3) The cabinet shall release the financial assurance mechanism required by this section upon notification of completion of post-closure requirements referenced in 40 C.F.R. 257.104(e) as established in 401 KAR 46:110.

(4)(a) A public notice shall be published in a daily or weekly newspaper of major circulation located in the county or counties where the property where the proposed CCR unit is located. If there is no daily or weekly newspaper of major circulation in the county or counties where the proposed CCR unit is located, public notice shall mean publication of required information in a daily or weekly newspaper of major circulation in a county adjacent to the county or counties where the property is located.

(b) Public notice shall include the information contained on the form incorporated by reference in Section 8(1)(c) of this administrative regulation.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CCR Notice of Concurrence Request", DWM 4610, January 2017;

(b) "CCR Annual Fee Form", DWM 4620, September 2016; and

(c) "Registered Permit-by-Rule for CCR Facility", DWM 4600, January 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste). (43 Ky.R. 854, 1415, 1559; eff. 5-5-2017; Crt eff. 9-5-2018; TAm eff. 5-7-2019.)